IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 2121 of 2006()

AGAINST THE JUDGEMENTWPC.28350/2005 Dated 21/07/2006

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APPELLANT: PETITIONERS

1. K.J.SHAJU,
   KALAPURAKKAL HOUSE, ANAPANTHI,
   ANGADIKADAVU P.O., KANNUR DISTRICT.

2. MEENAKUMARI J.,
   OMANA BHAVAN, PUTHUKKAD P.O., CHAVARA,
   KOLLAM DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
   TRIVANDRUM.

2. DIRECTOR OF PUBLIC INSTRUCTION,
   TRIVANDRUM.

3. DEPUTY DIRECTOR OF EDUCATION,
   KOLLAM.

4. DISTRICT OFFICER,
   KERALA PUBLIC SERVICE COMMISSION,
   DISTRICT OFFICE, KOLLAM.

BY GOVT.PLEADER SRI BENNY GERVASIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28/2/2007,THE COURT ON 13/3/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.

W.A.NO.2121 OF 2006

Dated this the 13th day of March, 2007

JUDGMENT

Raman,J.

Appellants herein are petitioners 2 and 5 in W.P.(C).No.28350/2005. They were included in the ranked list issued by the Kerala Public Service Commission for selection to the post of High School Assistant (Social Studies) in Kollam District. They were however not appointed. According to the appellants, various certificates, produced as Ext.P3 series, issued by the head of the institution of the High Schools in the region would show that there were vacancies available during the currency of the rank list and those vacancies are liable to be reported, even if the list has expired during the pendency of the writ petition. The list expired on 25th October, 2005. The writ petition was however filed on 4th October, 2005 as noticed by the learned Single

Judge. The contention regarding the existence of the vacancies prior to the expiry of the list was therefore considered by the learned Single Judge in the judgment impugned in this appeal. The learned Single Judge, based on the materials on record and in view of the counter affidavit filed on behalf of the respondents, held that existing vacancies before expiry of the list were liable to be reported. Even though it was contended by the appellants by filing a petition seeking to produce the staff fixation orders passed by the Educational Authorities for the purpose of finding out whether the existing vacancies mentioned in the counter affidavit is true or not, the learned Single Judge did not issue any such direction. Aggrieved thereby this writ appeal is filed impugning the judgment.

2. The learned counsel for the appellants contended before us that Ext.P3 series of certificates issued by the head of the institutions of the High Schools in the region would clearly show that there exist vacancies and

the contra averments contained in the counter affidavit cannot be accepted to be true. Ext.P3 series of certificates produced were perused by us. The first certificate was issued by the Principal of the Government Higher Secondary School, Punalur, which shows that there is one vacant post for Social Studies and a daily wages hand is working against such post. That post is already taken into account by filling up the vacancy, as even in the counter affidavit this post is admitted to be vacant. The next certificate is issued by the Government HSS, Thodiyoor, which shows that the sanctioned post of HSA (Social Studies) in that school is two and there is one vacant post of HSA (SS). But in the counter affidavit filed the number of sanctioned post of HSA (SS) is only 2 and the names of Teachers working are also shown in the counter affidavit and the present vacancy position is shown as 'nil'. In the case of Government High School for Girls, Chavara out of 3 sanctioned

posts two persons are working as a protected Teacher and a regular Teacher and there is only one vacancy. In the counter affidavit the names of three persons are shown as Teachers working in Government High School for Girls, Chavara and there is no vacancy at present. In the case of Government Higher Secondary School, West Kallada, the certificate produced shows that the number of vacant post of Social Studies is one against which a daily wages hand is stated to be working. Various other certificates produced by the petitioners said to have been issued by the head of the institution in respect of which the vacancy position has been separately stated in the counter affidavit. Even though the contention of the petitioners is that there are vacancies as per certificates issued by the head of the institution, the counter affidavit filed by the Deputy Director of Education, Kollam would

show that school wise details given in the counter affidavit are based on the details submitted by the Headmasters of the Government Schools before the 3rd respondent-Deputy Director of Education. It is contended on the basis of the said details as given in the counter affidavit that the certificates produced by the petitioners are not true to facts. It is also stated that out of the 20 exhibits regarding the vacancies of HSA(SS), one vacancy each in Government High School West Kallada and in Government High School, Punalur is yet to be filled up. It will be filled up through promotion of Primary Teachers as HSA (SS). It is also submitted that during the year 2005-06 18 vacancies of HSAs (SS)have arisen and 40% of the said vacancies were ear-marked for Public Service Commission recruitment, that is 7 vacancies have already been filled up. Remaining 30% of

the total vacancies have been filled up by inter district transfer and the remaining 20% and 10% of the total vacancies are to be filled up by promotion of Primary Teachers as HSAs and by transfer of staff of ministerial wing of the Education Department respectively. It is also stated that no more vacancy is available to be reported to the P.S.C.

3. In the above factual background and in the absence of any further materials produced by the petitioners to show that the averments made in the counter affidavit are incorrect or wrong and in the light of the counter affidavit filed by the 3rd respondent, who is the Deputy Director of Education, Kollam, that too based on the information furnished by the head of the institutions concerned, it has to be held that the petitioners/appellants have not been able to establish their case that there arose more number of vacancies than what

is stated in the counter affidavit for granting any relief. In the circumstances, the decision of the learned Single Judge, who did not place reliance on the certificates Ext.P3 series, dismissing the writ petition, was in our view correct and does not call for any interference. No other points were argued.

In the result, we find no merit in this writ appeal. Accordingly, this writ appeal is dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.